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ABSTRACT

Reduction in force (RIF) policies in community colleges are analyzed. The analysis focuses on the following topics: Regulations on Academic Freedom and Tenure (Gillis, 1971); RIF and Merit; Number of Colleges Involved in RIF; Strategies for Obviating RIF; Need for Carefully Prepared Policies and Procedures; RIF Policies; Faculty Participation; Activating the RIF Process; Seniority: Paramount Criterion for Order of Dismissal; Forms of Seniority; Departmental/Division Seniority; Seniority in Multicampus Systems; Seniority by Academic Rank; Notification of Dismissal; Rights of Dismissed Instructors; Severance Pay; Nontenured and Part-time Instructors; RIF and Affirmative Action; RIF and the Courts; Administrators and Liability for Damages; and Summer and Conclusion. A bibliography is provided. (DB)

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REDUCTION IN FORCE

An Analysis of the Policies
and Their Implementation

By

John Lombardi

Topical Paper No. 48

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REDUCTION IN FORCE

An Analysis of the Policies
and Their Implementation

By John Lombardi

In the last four or five years a new acronym, RIF has joined the long list of educational jargon. RIF or Reduction in Force common in other branches of public employment is not really a new phenomenon in community college education. Those who remember the wholesale reductions in the two years before Pearl Harbor when college enrollments fell precipitously and the less serious problems that arose in the 1950s during the Korean crisis, when enrollments again fell, but only moderately, can attest to the importance of this issue. Yet, it is now in the 1970s that we again are forced to look at the employment situation with a view to both past and future.

Up to 1945 administrators and governing boards had little difficulty in dismissing faculty since many colleges did not grant tenure but hired instructors on a yearly contract. And where they did exist tenure laws provided only modest job protection for instructors because of the many loopholes attached--for example, exempting colleges with low enrollments and permitting the firing of probationary instructors at the end of the probationary period without cause and with no recourse to due process. Until very recently, substitute instructors had no security and under these conditions, administrators had a free hand whether the cause for dismissal was incompetency, insufficient enrollment or financial difficulty. In sum, reduction in force was a relatively simple process.

For more than a decade after the Korean crisis, as enrollments soared and faculty recruitment became frenzied RIF was almost forgotten. Few people thought much about the possibility of a large scale reduction in force when energies were directed toward seeking candidates for positions in the 30 to 50 new colleges being organized each year, replacing faculty pirated by other colleges and filling new positions to care for increasing enrollments in existing colleges. Finances, although rarely

as much as educators asked for, were also adequate.

To make jobs more attractive in the seller's market, states and colleges began to strengthen job security through tenure laws and regulations. In time the pendulum had swung so far in this direction that removing an instructor became a difficult process. Actually, dismissal regulations or laws were invoked infrequently--primarily to remove a patently inefficient or physically or mentally incompetent instructor, a voc-tech instructor whose skill had become obsolete, or an instructor accused of moral turpitude or serious crime.

Beginning in the early 1970s when the enrollment growth rate slowed in many colleges the situation, however, changed dramatically (Lombardi, 1972). At the same time, colleges encountered considerable taxpayer resistance to increased appropriations. RIF on a large scale once again faced colleges that were in financial straits, had falling enrollments or had enrollments that were considerably lower than the projections. As a result, a different set of dismissal procedures had to be developed to meet the changing enrollment and financial situation. The older dismissal procedures that are still in vogue apply primarily to individuals who are considered incompetent. Except in a few colleges they cannot be used in situations requiring the dismissal of groups of instructors whose competency is not a consideration. Many state laws, where they exist, are not adequate to the present situation. They are intended to take care of the occasional situation involving an instructor or two teaching a subject that has lost enrollment, or a skill that has become obsolete. Such has been the case in foreign languages and in voc-tech programs or courses such as plastering which have become obsolete.

Indicative of the relative unimportance of RIF to the AAUP is that not until 1940 when it endorsed the Statement of Principles on Academic Freedom and Tenure did it take cognizance of the possibility of a reduction in force. The last sentence in the 1940 Statement read: "Termination of continuous appointment because of financial exigency should be demonstrably bonafide" (AAUP, 1967). Since then the AAUP has formulated other statements in greater length and in more detail--for example, in 1968 it included a section "Termination of Appointments by Institutions" in its Recommended Institutional

Regulations on Academic Freedom and Tenure (Gillis, 1971).

Also indicative of the lack of importance of this issue is that only five of 22 New York State community college contracts negotiated before 1971 contained a provision on "board freedom to reduce work force" (McHugh, 1973, p. 56). Of course, the absence of a provision in a contract did not necessarily mean that the college did not have a RIF policy; either some did or the negotiators may have considered state laws adequate for the purpose. Nevertheless, in light of the attention given to RIF in contracts since 1971, the omission does indicate the educators thought RIF an unlikely prospect.

A change has occurred in recent years. Since 1970 the number of colleges that have revised their termination of contract policies or developed new ones has increased. Based on a survey of policy statements, collective bargaining agreements and a review of the literature, it is estimated that at least seventy-five percent now have well-defined policies or state laws on RIF, including all or most of the colleges in California, Hawaii, Illinois, Iowa, Michigan, Minnesota, New York and Washington.

In this paper RIF refers primarily to policies and procedures used when dismissals of tenured and probationary instructors are made necessary by changes in the size or nature of the student population, inadequate finances and, to a lesser extent, by discontinuance of an area of instruction or consolidation of districts. Of course, finances are always involved in RIF since state allocations for most colleges and their income from tuition are directly related to the number of full-time student equivalents (FTSE) enrolled. Some of the most serious problems occur not because of declining enrollment but because of faulty student projections. The problem is compounded, of course, when projections for an increase in enrollment are followed by an actual decline in enrollment and where financing is also involved, the problem reaches crisis proportions. On the other hand, under RIF regulations, large scale reductions can take place in one or more areas of instruction even though the financial condition and overall enrollment are satisfactory.

RIF and Merit

Although there has been some discussion on utilizing RIF to strengthen the teaching staff, the consensus in community colleges is not favorable to

this point of view. Even among four-year colleges and university personnel the prevailing opinion is negative. And well it might be. To do through RIF what should have been done through more direct means at the time an instructor was found to be ineffective or inadequate is less than courageous and hardly a demonstration of good management. In other words, RIF should not be the scapegoat that covers the real reasons for dismissal.

Number of Colleges Involved in RIF

RIF applies to all segments of education, although the number involved in the RIF process is not known. Probably, the percentage is small, but this does not make the process any more comfortable for either the colleges or the people involved. Nor does it assure that it will remain so in the future. Headlines like "Faculty Firings Soar As Slump Hits Enrollment" (Semas, 1974a, p. 1), preparation of Developing Guidelines for Faculty Reduction in a Multicampus College (Zaharis, 1973) to meet an emergency, increasing attention to RIF in AAUP Statements and in collective bargaining agreements, conferences on staff reduction policies and practices and articles on the importance of better enrollment projections attest to growing concern in this unpleasant and troublesome activity (Holderfield and Brown, 1973).

For the future the probability is that enrollments are more likely to decline than increase. Although headcount enrollments in 1973 continued to show an overall annual increase of almost 10 percent approximately twenty-five percent of the colleges reported a decline. And if FTSE were used, the result would show a larger number of colleges with declines since the ratio of headcount to FTSE has been higher in recent years than formerly--i.e., it takes more students to make one FTSE. To illustrate, Table I shows that in Fall 1971 the FTSE for the Illinois colleges increased 12.3 percent while headcount increased 11.8. The comparable percentages 2.2 and 11.0 for Fall, 1972 showed a marked reversal, a phenomenon that continued into Fall, 1973.

Although declining increases in enrollments have been reported in states other than Illinois, community colleges have experienced less difficulty in adjusting to the new situation than the four-year colleges and

Table I
Opening Headcount Enrollment and FTE
Illinois Community Colleges 1969-1973

Year	No. of Colleges	FTE	Percent Increase over previous yr.	Headcount	Percent Increase over previous yr.
Fall 1969	43	79,671		147,882	
Fall 1970	46	94,617	19.6	169,961	14.9
Fall 1971	46	106,279	12.3	190,034	11.8
Fall 1972	47	108,637	2.2	211,533	11.0
Fall 1973	47	114,156	5.1	264,385	25.0

Sources:

For 1969-72: The Now Colleges in Illinois. March 1973, Office of Research and Management Information Systems, Illinois Junior College Board, p. 2.

For 1973: Community College Bulletin. Vol 8, no. 6, February 1974, p. 4. Illinois Community College Board.

universities, and much less than the public schools which were the first to feel the effects of lowered enrollments. A 1974 study of 163 colleges reported that for the three-year period, 1971-1973, staff reductions took place or were contemplated in 74 of the private four-year institutions, 66 of the public four-year institutions and 41 of the two-year colleges (Sprenger and Schultz, 1974).

The most serious period for community colleges occurred in the fall of 1971 when enrollments failed to come up to expectations. This was particularly true of colleges in California, Illinois and Michigan, colleges that had been projecting large enrollment increases every year. Colleges in other states also reported declines or lower than predicted enrollments (Lombardi, 1972).

Since 1971 the situation has stabilized and except for an occasional large scale reduction such as occurred at Miami-Dade in 1972 and lesser reductions in some Washington colleges, the community colleges are not suffering to the same extent as the senior institutions, especially the state colleges (Barnes, 1974).

The above assessment differentiates staff reductions from RIF. The former includes cutting back on substitutes and other temporary instructors and not filling positions vacated by leaves, retirements and deaths, a process that occurs periodically. RIF, on the other hand, usually involves separation or dismissal of probationary and tenured instructors.

Strategies for Obviating RIF

That more community colleges have not been seriously inconvenienced by financial difficulty or enrollment decline is attributable to increased financing, better projection techniques and normal staff attrition due to statutory and early retirements, deaths, leaves and job changes. Another important cushion for many colleges is the part-time staff, mostly instructors in the evening program but also a considerable number in the day program who have few, if any, rights to their jobs. When enrollment declines they and substitutes are just not rehired or, if assigned, are dropped if enrollment does not reach expectations. To their evening or part-time overload assignments even tenured instructors have few, if any, rights if these assignments are needed to supplement those of other tenured instructors.

Another cushion is to staff conservatively, underestimating the number of instructors needed. If enrollments warrant additional instructors, it is not difficult in the present buyer's market to recruit competent instructors. With the advent of low rate of enrollment increases, administrators are being more careful in adding new courses and more prone to eliminate courses that fail to attract students. The most effective method for obviating RIF has been to maintain or better increase enrollment by relaxing admission deadlines, scheduling classes all day and on Saturdays, establishing off campus centers, advertising in the local press, and distributing flyers and schedules throughout the district.

Logically, it might be expected that employee representatives would favor the use of part-time instructors as a protection for their tenured instructors. In fact, the opposite is the case. They do not favor the practice and instead, they insist that the number or percentage of part-time and non-probationary instructors be kept to a minimum (Jamestown Community

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College, New York, 1973). Part-time and non-probationary instructors are considered a threat to the tenured instructors because they receive lower pay per class time for the same kind of work and perform practically as well; they reduce the number of full-time instructors, the mainstay of the organization; they form a pool of potential replacements in case of a strike or lockout; and they deprive regular instructors of the opportunity for overload.

Where the enrollment dip is severe, the strategies mentioned above help only to the extent that fewer regular instructors are dismissed. For example, at Miami-Dade, some of the strategies mentioned helped reduce the number to be dismissed from 84 to 58 (Zaharis, 1973).

Need for Carefully Prepared Policies and Procedures

The experiences of colleges such as Miami-Dade as well as some court decisions point up the importance of carefully prepared policies for implementation when they become necessary. As important as policies however, are procedures during the implementation of the policies. The one sets the general guidelines; the other the method of operation. The policies protect the instructor from dismissal, reduction in rank or compensation, or deprivation of any professional advantage for arbitrary or discriminatory reasons; the procedures guarantee that the instructor is "given notice of charges against him, a fair hearing and related procedural safeguards" (Chanin, 1970, p. 35). The experience in California (and elsewhere) indicates "that the major reasons for court actions being filed to test the sufficiency of dismissal...are made on the procedures followed and not on the substance of the allegations" (Briggs, 1972).

RIF Policies

Considerable variations exist among RIF policies. They may be no longer than a sentence announcing that "The release of unit members owing to budgetary considerations, decreased enrollments, or requirements for specific technical specialities shall be made on the basis of seniority and qualifications to teach available courses" (Community College of Baltimore, 1974, p. 15). They may, on the other hand, consist of three or four pages detailing the various steps in the process--from placing

responsibility on the person who is to determine when to apply the rules to the rights of dismissed instructors to reappointment to their jobs and severance pay.

Sometimes, a college may have a good RIF policy based on state law, college policy and practice and/or collective bargaining agreement even though a coordinated policy does not exist. The absence of such a policy may be due to the reluctance of one or the other party, usually the employer, to agree to a restatement of existing law and policy on the subject lest the employer be forced to grant greater concessions during the bargaining. A proposed RIF policy of the Hawaii Federation of Teachers (Hawaii, HFCT Counter Proposal..., 1974) was not accepted by the employers since it would have substituted a seniority criterion system for the merit principle in dismissal. The trend, however, is to incorporate into one document or a section thereof an integrated policy dealing exclusively with RIF.

Faculty Participation

Notwithstanding that laws in some states define the conditions for dismissal of instructors and in all states, responsibility for developing guidelines rests with the college governing board and administration, faculty participation in the RIF process is taken for granted in many colleges and is mandated in a large number. Faculty participation may be a concomitant of collegiality, required by the terms of the collective bargaining contract, or the result of legal advice from the state board and/or the attorney general's office that not only are policies and guidelines imperative but faculty participation is essential to insure their acceptance of the equity of the process, to meet due process requirements and to reduce litigation.

Faculty participation is greatest in colleges operating under collective bargaining contracts. Occasionally, however, one comes across a contract in which faculty participation does not seem to exist. The Schenectady (New York) contract under "Termination of Contract", for example, includes the following terse statement:

The services of any staff member may be terminated in the event of financial or program retrenchment. The President

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shall give due consideration to the question of seniority in making his recommendations to the Board of Trustees for their action. There shall be no right of appeal from such action by the Board of Trustees (1972, Art. VI, IV C).

Paradoxically, where specific guidelines or criteria are established, faculty participation tends to be minimal except to monitor the almost self-administering process. In its memorandum on dismissal of instructors, the Los Angeles County Council's office did not include any comments or suggestions for faculty participation.

When it does exist, faculty participation may involve nothing more than the opportunity of faculty representatives "to meet with the president who shall fully document the need for...reductions in staff...and present and explain the major criteria to be used to identify those to be laid off" and if necessary to eliminate courses to "identify those courses and explain why they have been judged not to be the most necessary course offerings to maintain the best possible quality educational opportunities..." (Grays Harbor College, 1974, p. 1). Presumably, the faculty representative would be permitted to offer suggestions but nothing is written about this in the procedure.

In contrast, are statements in many collective bargaining agreements specifying that when there is an impending reduction in force within the bargaining unit the Employer shall inform the Union in a timely manner and shall obtain the advice and consent of the Union before any reduction in force can take place. The Macomb County Community College (Michigan) contract states that the President of the Faculty Organization "must be given prior notice of and an opportunity to discuss...layoffs through the service committee before they are implemented (1972, p. 48). Agreements may also provide that the determination of programs to be maintained or eliminated is to be made by the Board of Trustees "in consultation with the President, his staff and the Association" (Oakland Community College, 1973, p. 8). At Miami-Dade (Florida), which was not operating under a collective bargaining agreement at the time reduction in force became necessary, a broad-based committee of district and campus administrators, department/division chairperson and representatives from each of the respective campus senates was

organized "to develop criteria to be used in the staff reduction program for the 1973-74 year" (Zaharis, 1973, p. 10).

It is questionable how effective are provisions declaring the President's decision as final in the various steps in the RIF process. If an aggrieved faculty member is unable to initiate a grievance, he and/or his organization cannot be prevented from taking the case to court, the administrative board or an arbitration agency.

Activating the RIF Process

All RIF policies state that dismissals of instructors may take place when enrollment declines but few indicate how much decline must take place before the process is activated or how many instructors may be dismissed. The tendency in some policies is to give major responsibility to the President who may be required to notify and/or consult with the recognized employing organization both on the need for a reduction and on the number. At such consultative meetings the employee representatives may question the President's reasons for the proposed reductions and the number of academic employees he is considering to lay off. It is not always clear how much this restricts the President's prerogative.

More specific criteria are incorporated in some state laws or college policies. Staff reduction may be implemented at Schoolcraft Community College (Michigan) "in the second consecutive semester in which every member of a given discipline cannot be assigned" (1972, p. 13). California law specifies that "whenever in any school year the average daily attendance (FTSE)...for the first six months in which school is in session shall have declined below the corresponding period of either of the previous two school years...the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the [college] district, permanent as well as probationary..." (California, Education Code, sec. 13447).

Similarly in the Fulton-Montgomery Community College (New York) contract, tenured faculty may not be terminated "unless there is an accumulated reduction in Full Time Equivalent Students (total semester hours credit for an academic year, day, evening, winter term, and summer $\div$ 30) of 10% or more below the base figure, 971 Full Time Equivalent Students" (1973, p. 16).

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A cut off point may be the minimum student-faculty ratio. In New York state, allocations depend upon the maintenance of an 18:1 ratio.

When insufficiency of finances is the reason for dismissals the situation may be more complex. Differences of opinion between the administration and faculty over allocation of funds and faculty suspicion that a budget imbalance may be contrived occur in normal times; they are intensified when a reduction in force is likely to take place. In the RIF policies or laws there are no criteria for financial insufficiency similar to those for enrollment declines.

Whenever a particular kind of service is to be reduced or discontinued an objective criterion is declining enrollment; but reduction or discontinuance may be for other reasons; to reduce expenses, to make room for another program the administration believes is more useful to the college, or to get rid of a troublesome activity or even one or more individuals.

It is obviously impossible to create a policy that is not dependent upon individual judgment and therefore subject to possible manipulation. The hearing and court cases provide examples of faculty grievances over the implementation of the RIF policies; and as indicated, many of these are over procedural rather than substantive issues.

Seniority: Paramount Criterion for Order of Dismissal

Under RIF, dismissal procedures depend heavily on seniority, the priority that comes from length of continuous service. Rarely is a merit-type system used. This applies to policies in which faculty input is at a minimum as well as in those providing a great deal of faculty participation.

Merit is sometimes indicated as one or even the main criterion in the dismissal procedures, but it is doubtful that it is often applied. Elsewhere in this paper are cited the merit policies at Schenectady Community College (New York) and the Hawaii University system, of which the community colleges form a unit. Here the generalization is made that even where merit is indicated as a criterion for dismissal, close examination of the policy or its implementation suggests that merit plays only a small part. Thus, in 1973 the merit units criteria used at Hutchinson Community Junior College (Kansas) involved little subjective judgment since merit units were acquired

by faculty through approved college credit above the Master's degree and years of teaching experience at the college. Fifteen university credit hours or any three years of teaching at the college constitutes one merit unit. Those with the least number of merit units are released first.

Even at Miami-Dade (Florida) where the approach was that "time of service would be immaterial in determining who would be retained and who would be dismissed" (Zaharis, 1973, p. 11), seniority played a major role. Of the 54 instructors released, 51 were on annual (nontenured) contract and three on continuing contract. The three "were in departments that suffered substantial student enrollment decreases, and their academic preparation was of such a specialized nature as to make it impractical to transfer them to another discipline..." (p. 20). Two of the annual contract personnel with longer tenure were dismissed while a black instructor in the same department with one-year tenure was rehired in order for the college to have "the same percentage of black faculty members as it had before the cut-back was made" (p. 19). RIF and affirmative action policies often go hand-in-hand.

It could be argued that merit plays the major part in dismissal in colleges with academic rank. However, the great concern over the "deadwood problem" (Gillis, 1971, p. 371) at four-year colleges and universities indicates that such is not the case. Even withstanding the agitation for accountability or merit as a condition of continuing assignment and the absence of laws on tenure in some states, faculty representatives press for adherence to seniority when policies are prepared and when terminations are necessary under RIF. They are justifiably wary of the possibility of using RIF policies to weed out "undesirables".

Forms of Seniority

The early regulations governing large scale reduction in force usually provided for separation on a simple college-wide seniority system. Thus, when enrollment at Los Angeles City College declined from 7,000 to 1,500 in 1942, all faculty members were dismissed in May, 1942 and then, on the basis of a college-wide seniority roster prepared for the occasion, some were rehired as needed before the opening of the Fall, 1942 semester.

Such a system based on last hired, first fired is not easily applied in today's colleges, with specialized vocational-technical and liberal arts courses, governed by laws and regulations requiring specific rather than general degree qualifications for instructors, and subject to affirmative action policies. College-wide seniority is still basic in RIF regulations but it is supplemented by other kinds of seniority lists that are usually prepared annually, semiannually or quarterly.

Since seniority is central to dismissal procedures and since it has multiple aspects, college policies and collective bargaining agreements define seniority in considerable detail. Foremost is the master seniority list of all instructors arranged in order of the date of first hire or appointment letter, first day of work, or date of conferral of tenure. One college uses February 1, May 1, September 1, or December 1 as the college seniority date which "subtracted from the current date, will give the number of years of contractual service as an instructional employee..." (Henry Ford Community College, 1973, p. 9). Usually, instructional seniority consists of all years of full-time teaching with the college; however, time involved in professional leaves, especially sabbaticals, approved by the governing board is counted as continuous creditable service for the purpose of seniority. Unpaid professional leaves are sometimes counted as creditable service (State University of New York, 1971). Where two or more instructors have the same beginning date of service, the order of seniority is determined by highest rank, earliest date of rank, highest last three digits in social security number, earliest date of birth, highest number of merit points or similar objective criterion.

Departmental/Divisional Seniority

Departmental, divisional or area of instruction seniority is becoming as important as institutional seniority. The old rule common in California and elsewhere was that an instructor with a general credential was qualified to teach any subject or area of competency. Where credentials are not necessary for employment, the subject or area of competency for which an instructor is employed to teach determines his seniority rights.

Complications arise when an instructor who has taught courses in other

subjects or areas is teaching in a department with declining enrollment. An obvious example of such an area is the foreign languages department where enrollment decline has been serious and where it is rare to find an instructor who is qualified to teach only one language. Teaching combinations are also common in the life, physical and social sciences some of which have also experienced some decline. In general, a person's rights depend a great deal on his assignments during his tenure. If he has taught more than one course in two or more disciplines and if at the time he had not been evaluated as inadequate in any of the subjects taught, he may acquire seniority rights in all the disciplines he has taught.

Instructors at Allegheny County Community College (Pennsylvania) who hold a joint appointment and who teach more than one course in a department are considered as members of that department with all privileges and responsibilities. In other colleges an instructor has membership in only one department, division or learning area. In some colleges he retains the right to an assignment in another area in which he has taught ahead of any non-tenured instructor. Still, other colleges give an instructor reasonable time in which to retrain for a position in another department or area.

Seniority in Multicampus Systems

The growth of multicampus systems introduces another variable. In such systems seniority may be on a system-wide basis or restricted to the campus of employment. Under the former an instructor with higher seniority may replace an instructor with lower seniority on another campus. However, the administration usually retains the right to select which of the two or more instructors with lower seniority are to be dismissed, whether on the same or on different campuses within the system (Community College of Allegheny County, 1974). Nor may a faculty member exercise his "bumping right" over tenured instructors, "if it is possible to provide him with a full-time program through the elimination of part-time lectureships or over-time at his own college and then elsewhere in the colleges" (Cook County, 1973, pp. 22-23). Most community multicampus districts use the district-wide system, Erie Community College (New York), an exception, uses campus seniority.

State systems such as Hawaii, Minnesota, and New York use college

seniority. In the City University of New York, seniority for tenured instructors is system-wide within the segment, i.e., community colleges or universities. As mentioned above, instructors employed on continuous employment basis earn seniority only in the college of appointment. "Special consideration for appointment to appropriate available position" is usually made for terminated instructors who desire to transfer to other colleges within the SUNY (1971, p. 24) as well as in the Minnesota and other systems.

Seniority by Academic Rank

A fourth variable is academic rank, with highest seniority for professor and lowest for instructors. Within each rank, order of seniority is directly related to placement on salary step.

As is evident, not all but most, policies require a strict seniority--last hired, first fired--in the dismissal of surplus instructors. The contract at Henry Ford Community College (Michigan), one of the most liberal in regard to surplus teachers, is illustrative. It provides that:

Full-time teachers placed on a list of surplus teachers will not be severed by the Board if the following conditions exist with relation to part-time employment within their division or area of competency:

- a. there is sufficient part-time or extra-contractual time (day and/or evening) in their area of teaching competence to make up a full-time program.
- b. the full-time teachers so affected are willing to take those specific assignments as are available in the schedule.
- c. the division/department in question is able to provide the range of courses required by programs within that division/department.
- d. the division/department is able to absorb and maintain, for the duration of the contract within the courses offered, any student credit hour generation which may be lost in order to effect equivalent economies (1973, pp. 10-11).

In addition to the various safeguards mentioned policies may prohibit administrators and other non-teaching personnel "to assume teaching assignments

which result in the layoff of any member of the bargaining unit," (Macomb County Community College, 1972, p. 13) and provide, "Possibilities for re-alignment of staff utilization...for the purpose of allowing faculty members with the greatest seniority who possess the necessary qualifications (e.g., Master's degree in subject area, graduate major, or vocational certification) to remain with the college" (Henry Ford, 1973, p. 10). Under the Macomb County Community College (Michigan) contract, the right of surplus instructors to retrain extends for three semesters. And under California law, the board is required "to make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render" (Education Code, sec. 13447). More specifically, the Jefferson Community College (New York) contract stipulates that "No full-time employee on continuing appointment shall be retrenched, laid off, or otherwise terminated without a concerted effort being given to the retention of the employee" (1973, p. 46).

On the other hand, the Schenectady Community College (New York) contract gives the President discretion on "the question of seniority in making his recommendations [for dismissal] to the Board of Trustees" (1972, Art. VI C 1.) and the Public Employee Collective Bargaining Act of Hawaii states that: "The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with merit principles...or which would interfere with the rights of a public employer to...relieve an employee from duties because of lack of work or other legitimate reason" (Tinning, 1971, p. 18).

The Hawaii contract, however, provides that tenured faculty members who lose their positions due to a reduction in force shall be placed on a preferential rehiring list on the basis of their total years of service with the University, for a period of one year" (Hawaii, 1973, p. 46). No provision is made for the rehiring rights of the other classes of faculty.

Notification of Dismissal

RIF policies always contain a requirement that the Board shall notify the faculty member to be dismissed some time (usually 3 to 6 months) before the end of the year in which the dismissal is to take place. However, since

the procedure starts soon after it is determined that the staff must be reduced, those likely to be dismissed know or are notified early in the first semester. The most common official deadline dates are in March and April, with a few as early as December 15.

This follows practices already in state laws. The deadline dates, while not as liberal as those endorsed by the AAUP (Gillis, 1971) do provide the affected faculty member an opportunity to seek a new position early in the winter or spring. In lieu of notice of discontinuance or release the faculty member at Lehigh County Community College (Pennsylvania) received severance pay equal to one-half of his current salary (Lehigh, 1972). State laws prohibit the dismissal of a tenured and probationary instructor who has not been notified by a specified date.

Rights of Dismissed Instructors

Some variations do exist. For example, dismissed instructors retain rights to vacancies in their fields for one to three years; most often two years, infrequently for a longer term if the original appointment was for a specified period. The Muskegon Community College (Michigan) and Moraine Valley Junior College (Illinois) contracts contain no time limits on reassignment. Most contracts require that the dismissed faculty member must apply for reassignment each year he has the right to do so. However, more and more are requiring that the Board notify employees of vacancies by certified mail. Rehiring also follows seniority, the last fired, the first rehired.

In a multicampus district the right extends to a vacancy in any district college. State and university systems also extend this right to a dismissed instructor but it may be subject to appointment prerogative of the receiving president. In the Schenectady (New York) contract there is no provision for reassignment but colleges often make formal and informal efforts to help dismissed instructors find new positions not only in their own systems but in other colleges. With the consent of the dismissed instructors they notify other college and university placement bureaus of their availability. Occasionally, they place advertisements in general and professional educational journals.

Faculty members who are recalled often "retain all accrued benefits,

such as sick leave and seniority [and] upon recall shall be placed at the next higher increment on the salary schedule than at the time of layoff and will retain their tenured status" (Grays Harbor, 1974, p. 3). Macomb County Community College (Michigan) reemployment does "not result in loss of status or credit for previous years of service", (1973, p. 49) which means that the instructor will be placed at the increment on the salary schedule that he would have achieved had he not been dismissed.

Severance Pay

Very few colleges provide severance pay to dismissed instructors. Oakland Community College (Michigan) grants one month's salary as severance compensation while Lehigh County Community College as we noted previously grants severance pay when instructors have not been notified six months in advance. Severance pay equal to 20 percent of unused sick leave up to 100 days is given to every dismissed instructor in the Minnesota colleges. Upon termination of service a teaching faculty member at Nassau Community College (New York) receives a cash payment equal to 25 percent of his unused sick leave up to a maximum of 13 days pay.

In business and industry severance pay to employees involuntarily laid-off through no fault of their own is a common practice. It is likely that the practice will spread to the colleges. The growing practice of granting retired instructors lump sum payments or credit toward retirement for all or part of their unused sick leave may be the prelude to extending this benefit to dismissed instructors as well. This could be accomplished by college policy as at Nassau Community College or state law making all instructors in good standing who are terminated, resign or retire eligible for the payment of all or part of accrued sick leave. Waubensee Community College (1973) extends lump sum payments at retirement or after fifteen years of service. For instructors terminated under RIF the fifteen-year requirement would not be of much help, since most such instructors have fewer years of service at the time of dismissal. However, it usually is easy to extend a benefit to other classes of employees once a policy is established. For an instructor with short tenure the Oakland Community College lump sum payment plan will be more beneficial than the sick leave payment.

Nontenured and Part-time Instructors

This concern for the tenured and probationary instructors is in sharp contrast to the almost total absence of job protection for substitute, term assignment, adjunct, and part-time instructors, whose services "may be terminated at will by the President" (Jefferson Community College, 1973, p. 46).

Similar statements are incorporated in many RIF policies and state laws as a protection against claims of continued employment as a property right under the Fourteenth Amendment. This situation is changing for such instructors who are rehired for one or more additional years. As a result of court decisions, state laws and collective bargaining agreements instructors who teach for two or more consecutive years may acquire de facto or legal tenure status.

Under California law the governing board may terminate the employment of a temporary employee at its discretion at the end of a day or week, which ever is appropriate. Some collective bargaining agreements provide that a faculty member on a terminal contract who is rehired for a second consecutive assignment shall be given probationary status (Lansing Community College, 1973, p. 34). The court decisions relating to part-time, nontenured and tenured instructors will be discussed later.

RIF and Affirmative Action

In the light of affirmative action policies and court decisions it is surprising that hardly any mention is made of them in RIF policy statements or in their implementation. Perhaps the pledge against discrimination and coercion (and similar sections) that appears in college policies and in collective bargaining agreements is considered sufficient. Yet the application of the seniority principle tends to weaken affirmative action policies since women and minorities being the most recently hired are disproportionately represented among those who are laid off. As was mentioned earlier, an exception was the decision of Miami-Dade administrators to retain a black instructor and dismiss two white instructors with longer tenure in order to maintain the ratio of black to white instructors (Zaharis, 1973, p. 19). This action (which was appealed to the Economic Employment Opportunities Commission) seemed to be contrary to a Supreme Court decision "that faculty

allocation on a nonracial basis must be an integral part of any desegregation plan" (Chanin, 1970, p. 32). Later a Court of Appeals opinion after following the Supreme Court ruling that "Staff members...will be hired, assigned, promoted, paid, demoted, dismissed, and otherwise treated without regard to race, color or national origin" added that "no staff vacancy may be filled through recruitment of a person of a race, color or national origin different from that of the individual dismissed or demoted, until each displaced staff member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so" (En Banc School Cases, 1969).

While the above decisions are based on cases involving the reorganization of dual (black and white) systems into unitary systems, they have implications for RIF policies and procedures. The Supreme Court decision is quite clear that the dismissal process must be done in accordance with the Civil Rights principles while the Circuit Court ruling supports affirmative action principles in the rehiring process.

RIF and the Courts

A great deal of the impetus for the proliferation of RIF policies comes from the desire on the part of administrators to avoid court action by the dismissed instructors to test the sufficiency of dismissal and on the part of instructors to prevent discriminatory and arbitrary action by administrators. Despite the best of intentions differences of opinion arise and court action often follows. A great deal of case law on the respective rights of administrators to dismiss instructors and of the rights of instructors to their jobs had developed before RIF became common and much of it relates to actions not involving RIF but the number of such actions has increased considerably with the increase in the dismissal of instructors.

In 1970 the National Education Association published Protecting Teacher Rights: A Summary of Constitutional Developments prepared by Robert H. Chanin, its general counsel. Based on the provisions of the First Amendment and the Fourteenth Amendment to the United State Constitution, this document states:

- A. No teacher may be dismissed, reduced in rank or compensation, or otherwise deprived of any professional advantage because of the exercise of constitutionally protected rights.

- B. No teacher may be dismissed, reduced in rank or compensation, or otherwise deprived of any professional advantage for arbitrary or discriminatory reasons.
- C. No teacher may be dismissed, reduced in rank or compensation, or otherwise deprived of any professional advantage unless he is given notice of the charges against him, a fair hearing, and related procedural safeguards (Chanin, 1970, p. 2).

While Chanin's scope is broader than that contemplated in RIF policies, the three propositions crop up in many of the cases originating from interpretation of RIF as defined in this paper. They appear in the instructors' petitions for relief and in the court rulings.

In the procedures developed by the Los Angeles County Counsel's Office for the guidance of boards and administrators the importance of these propositions is stressed. For example, the County Counsel memorandum outlines for administrators and boards the steps they must take "in the termination of employment of probationary and permanent teachers..." and provides sample forms with instructions for completing them. The sample form "Notice of Recommendation Not to Reemploy Probationary or Permanent Teacher" attempts to make the dismissal process court-proof by insuring that the administrator complies with the law and with the current court rulings regarding discriminatory and arbitrary actions and by advising the instructor of his right to "request a hearing to determine whether there is cause for not reemploying you for the ensuing school year." A copy of the law accompanies the formal notice to the instructor. The only reference to a personal expression are the sentences "I regret that I am constrained to give you this notice. My reasons for such action are as follows:..." (Briggs, 1972, pp. 1-2).

A recent decision, however, proves how difficult it is to create court-proof procedures. Ironically, the decision arose out of the interpretation of the most specific part of the law that permits a board to dismiss the number of instructors corresponding to the proportionate decline in enrollment. The court ruled that the Board erred in not taking into account the reduction of faculty due to retirement and resignation when computing the number to be dismissed. The court disallowed the Board's contention that in dismissing the excess number of teachers it was eliminating "a particular kind of service;" i.e., "teaching," a category that was not intended as a

cause for dismissal by the law (*Burgess v. Board of Education*, 1974).

Where tenure is authorized by law or board regulations the dismissal of tenured instructors must follow procedures outlined therein. If seniority is the criterion for determining the order of dismissal every effort must be made to retain an instructor with seniority over those with less seniority. Thus a New York judge ruled that "a tenured teacher may only be released according to statutory procedure, including a hearing by state statutes" (*Lynch v. Nyquist*, 1973). In this case a tenured teacher had been dismissed while a teacher without tenure and one with less tenure had been retained. Although the dismissed teacher was not certified to teach the subject of the teacher with less tenure, the fact that he had taught it gave him preference for retention. Indirectly, this requirement of readjusting assignments, if necessary, to prevent the dismissal of an instructor with high seniority forces the administration to consider competency. It also causes difficulties for employee representatives in colleges operating under agreements since no matter what the ruling an organization employee is affected. To obviate these difficulties, clauses are being included in RIF policies requiring that each instructor be assigned for seniority purposes to one department or division. It remains to be seen how the courts will adjudicate cases arising from such clauses.

Where merit is the criterion the administrator has more latitude in selecting those to be laid off and at the same time he incurs more challenges. In a Wisconsin case involving the lay off of 38 tenured instructors a federal district judge supported the right of the administrator in the layoff. He also listed four minimal procedures that must be followed in dismissing a tenured instructor:

"Furnishing each plaintiff with a reasonably adequate written statement of the basis for the initial decision to lay off."

"Furnishing each plaintiff with a reasonably adequate description of the manner which the initial decision had been arrived at."

"Making a reasonably adequate disclosure to each plaintiff of the information and data upon which the decision-makers had relied."

"Providing each plaintiff the opportunity to respond."

Since these procedures were followed, faculty did not have the right to cross examine those who made the decision to be consulted or to be "provided an opportunity to persuade the decision-makers" to consider other alternatives (Semas, 1974b, p. 2).

This decision, especially in regard to the last two points seems to be at odds with the Bloomfield College (New Jersey) ruling that the administration had an obligation to consider alternatives proposed by the faculty (Semas, 1974c).

The two cases had one important difference. In the Wisconsin case the University was found to have fulfilled the minimal procedures and the faculty had not claimed they were laid off arbitrarily or for exercising their constitutional rights. Arbitrary and discriminatory motives were alleged in the Bloomfield College case. The college had hired 12 new faculty members while firing 13, 11 of whom were tenured, causing the judge to remark that the "primary objective was the abolition of tenure...not the alleviation of financial stringency" (Semas, 1974c, p. 2).

As was indicated above, nontenured instructors have extremely limited rights. In two rulings, Board of Regents v. Roth and Perry v. Sindermann* both handed down on June 29, 1972, the Supreme Court held that:

1. An instructor with a formal notice of appointment to start September 1, 1968 and end June 30, 1969 secured no guarantee that his contract would be renewed.
2. An instructor employed on a year-to-year basis had the right to a hearing to prove whether or not his claim of de facto tenure was justified by virtue of custom and practice. If it were, then he had a property interest in continued employment protected by the Fourteenth Amendment.
3. An untenured instructor was entitled to a hearing if the non-renewal of employment was alleged to be for an infringement of his First Amendment rights (O'Brien, 1974, p. 180).

*The texts and an extended discussion of these decisions are in Shulman, C. H. Employment of Nontenured Faculty: Some Implications of Roth and Sindermann.

On the basis of the Sindermann decision, O'Brien concluded that "public schools may not decide against the reappointment of nontenured teachers for no reason whatsoever or for any reason they might choose and that such teachers do have rights which in certain instances would include notice and hearing" (1974, p. 195).

A 1974 California Supreme Court decision supports O'Brien's statement. The unanimous court cited Perry v. Sindermann in upholding a Peralta Community College District part-time instructor's claim that he qualified as a probationary instructor since he had been employed continuously for four and one-half years as a part-time instructor. The Court also pointed out that Balen, the plaintiff, was not a substitute or temporary instructor hired to fill a short term need of the district. "Continuity of service," the Court added, "would seem to create the necessary expectation of employment which the Legislature has sought to protect from arbitrary dismissal by its classification scheme." In another important dictum the Court gave "little consideration" to the district administrative practice of dismissing its part-time instructors on May 15, regardless of performance and then rehiring them for the following year, because "the form letter dismissal with virtually automatic rehiring creates an expectancy of reemployment." Finally, the Court stressed that the District had not adhered to the procedural requirement of advising Balen of his right to a hearing. (Balen v. Peralta Junior College District, 1974).

These developments will not necessarily change the relative status of the part-time and nontenured instructors. Obviously, they will force a change in administrative practices. Administrators will have to be more careful in assignments of part-time and temporary employees. They will not be able to hire an instructor year after year on a temporary status to avoid granting him tenure. If a position is truly of a temporary nature the administrator under the Roth decision can still terminate a temporary instructor's assignment, at the conclusion of his assignment. If he employs another instructor for that position he runs the risk of a challenge.

Nor is the governing board or the administration deprived of the authority and responsibility for reducing the staff when enrollment declines or funds are not available. However, the Sindermann decision requires that

in classifying instructors as tenured or nontenured, administrators must consider the actual, rather than only the nominal status of the assignment.

Neither will the number of instructors that may be dismissed be affected. What Sindermann and Balen do is to give full-time "temporary" instructors and the part-time instructors in California employed for two or more consecutive years seniority rights with all of the other perquisites that go with such rights if they are dismissed under RIF. For the leaders of the teacher organizations they raise problems when the part-time and temporary instructors with high seniority bump one or more tenured or probationary instructors.

Administrators and Liability for Damages

Administrators responsible for implementing RIF policies are being advised by state and local legal counsels that they face the possibility of suit for personal damages if a dismissed instructor can prove that the "official action was purposely discriminatory, knowingly reckless or willful" (Miner, 1974, pp. 2-3). Miner, General Counsel, Florida State Board of Education, also states that "the privilege of not being a party defendant in litigation arising out of the dismissal or nonrenewal of faculty personnel, while still in a state of uncertainty, is now becoming nonexistent" (p. 1).

One of the twenty cases cited by Miner in support of his conclusion involved an associate professor in a junior college who sued the Utah State Board of Education, the President, the Dean of Academic Affairs, and the Dean of Applied Arts. Miner's account is worth quoting in full:

When the professor came up for tenure, the tenure committee voted 3-2 to put him on tenure, the two dissenting votes cast by deans, who believed he should have been put on probation for another year. The President then recommended the additional year of probation. At the conclusion of the year of probation one dean recommended his dismissal and the vote was 4-1 for dismissal. The President affirmed the dismissal. The professor claimed and the court found his First Amendment rights had been violated. The court then applied the good faith test of official immunity and awarded the plaintiff

\$4,100 in actual damages against the President and deans and also punitive damages in the amount of \$2,500 against the President and also \$2,500 against the dean who recommended dismissal (pp. 3-4).

Miner's paper delivered at the "Staff Reduction Policies and Practices Conference at Washington State University" in July 1974 points up the importance of carefully prepared RIF policies and strict adherence to objective criteria in the dismissal process. The threat of civil suits for damage will also cause administrators to eschew the temptation to use RIF as a means of getting rid of instructors whom they consider troublemakers or critics of the governing board, the administration and/or the college.

Summary and Conclusion

From the analysis of RIF policies made for this paper, it is evident that legislators, administrators and faculty are developing equitable procedures for the unpleasant task of reducing staff for causes beyond their control. In general, the policies and their implementation involve participation by the faculty and the use of seniority as the principal criterion in the layoff process. The policies grant dismissed instructors rehiring rights for a reasonable time, also on the basis of seniority. Many require that whenever possible, adjustment be made to give an instructor an assignment in another area than his major department or division. A few are providing instructors the opportunity to retrain for another position. A very few give dismissed instructors severance pay.

A serious omission in most policies is a reference to affirmative action programs. The court cases that have been adjudicated involve rights of faculty who have been dismissed because of consolidation of segregated public school districts.

These policies for the most part protect the tenured and probationary instructor. Long-term substitutes, part-time and other nontenured instructors have very few comparable rights. Recent court decisions may improve their status.

Reduction in force of tenured and probationary instructors has become

part of the operational procedures for some administrators during the past five years. The number will increase during the next decade as zero population growth now affecting enrollments in the elementary and secondary schools takes its toll in decreased enrollment in the community colleges. For a time community colleges may recruit students from other age groups to replace the 18-24 year olds but it is unlikely that the older groups will make up the reduction. Headcount enrollments are higher than formerly but they may be deceptive since headcount does not always convert to enough full-time enrollment to make up the loss of the 18-24 year olds.

When RIF becomes necessary the process is less difficult, but not less pleasant if faculty have had a part in developing the policies and are advised in advance of the implementation. Even more important is the willingness of administrators to consider alternatives such as across-the-board reduction in salary, reductions in other expenses or fringe benefits in lieu of dismissal or reductions. Alternatives are not always feasible, however, especially if reduction in force involves a large number of instructors.

It is almost an article of faith that RIF should not be used to try to get rid of "deadwood" unpleasant, troublesome, or highly paid instructors. While some may claim that seniority is an easy way out, the counterclaim may be made that administrators who failed to separate instructors on the basis of their incompetency are acting unethically in using RIF.

Under the best of circumstance RIF affects morale. One of the most enticing attractions of teaching has been its security. The prospect of tenured instructors being laid off, unheard of just a few years ago, is shattering even to those who are high on the seniority roster.

Low morale also may be accompanied by disgruntlement with the administrators who may be accused of mismanagement and incompetency. At Miami-Dade Community College the large number of dismissals plus the unexpectedness of the enrollment decline made it difficult for the administrators to persuade "some of the faculty...that there were extenuating factors that could not have been identified to anticipate the decrease" (Zaharis, 1973, p. 17). Another aspect contributing to low morale, especially when enrollment projections prove unreliable is that those responsible for the miscalculation are

not penalized. Put in another way, in most RIF actions the penalties are borne by the instructors alone.

In general, administrators, considerate of the losses incurred by dismissed instructors, have tried to reduce the number. Moreover, the policies provide benefits of reemployment and in a few instances severance pay.

Judicial decisions on various aspects of RIF are having their influence in determining the parameters of the process. They uphold the right of management to reduce the staff when they deem it necessary, but at the same time they protect the instructors against discriminatory action whenever dismissals violate their freedom of speech (First Amendment) or property rights (Fourteenth Amendment). The rising number of financial judgments against administrators who deprive an instructor of a constitutional right will cause administrators to observe the spirit as well as the letter of the policies and especially the procedures when implementing RIF.

Hardly anyone involved in RIF considers the process as conducive to morale. Administrators can do much to reduce the uneasiness, uncertainty and fear of instructors by early communication with the faculty and consultation with their representatives when conditions seem to require the implementation of the RIF process. Frankness is necessary in describing the relative seriousness of the conditions and the probable number of instructors that may be involved. It is worth repeating that the faculty will feel less aggrieved if the criteria for activating the process are objective and easily identified, if they participate in the process from the beginning, if all of the possible alternatives to dismissal are thoroughly explored, if opportunity for retraining in another area is available, and if, when dismissals are made, severance pay, aid in obtaining jobs elsewhere and rehiring rights are offered.

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